COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 335 of 2002

Smt. Rukmani Devi & others ... **Appellants.**

Versus

U.P.S.R.T.C. & another … **Respondents.**

Mr. Rajendra Dobhal, learned counsel for the appellants.
Mr. A.N.Sharma, Advocate, learned counsel for the respondents no.1.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Admit.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 28-09-2002, passed in M.A.C.T. Case No. 138 of 1999, Smt. Rukmani Devi and others Vs. U.P.S.R.T.C., by the Motor Accident Claims Tribunal/District Judge, Pithoragarh ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs. 1,46,000/- along with interest @ 9% per annum in favour of the claimants-appellants, as against the Opposite Party –respondent no.1. Aggrieved, the claimant-appellants have come up in appeal with a prayer of modifying the impugned judgment and award thereby enhancing the amount of compensation. The main prayer in this appeal is that the income of the deceased has not been correctly assessed and the multiplier has not been suitably applied.

Brief facts of the case are that Joga Ram, husband of claimant no. 1, has died as a result of injuries sustained by him in a motor accident. Claim petition has been preferred alleging therein that on 27.2.99, Joga Ram ***(the deceased)*** was travelling by

U.P.S.R.T.C. bus from Nachani to Munsyari. When the bus reached near place Kheti Patal Ginni Bend, then due to rash and negligent driving by the driver of the bus, the accident in question was caused with the result the deceased and many others sustained grievous injuries and the deceased succumbed to his injuries in the hospital. The deceased is alleged to be 35 years of age and was earning Rs. 4,000/- per month from the profession of carriage of goods on mules. The O.P. U.P.S.R.T.C. contested the claim petition and stated in the written Statement that the accident in question was not result of rash and negligent driving by its driver, rather it was the result of land slide, which tool place at the spot. It has been asserted that amount of Rs. 10,500/- has already been paid by the State and the O.P.

The learned Tribunal framed necessary issues in the case. Issue No.1 related to rash and negligent driving by the driver of the bus resulting into injuries and consequent of the deceased and Issue No. 2 related to the relief and compensation. After considering the evidence on record, the Tribunal found on Issue No. 1 that P.W.2 Narendra Singh has given ocular account of the motor accident and he was also travelling by the ill-fated bus. It has been stated by this witness that the driver of bus was driving the bus in high speed and rashly and negligently. The O.P.- respondent no.1 has produced conductor of the vehicle Chandra Sekhar, who has tried to support the plea of the U.P.S.R.T.C. by saying that due to fall of stones from the mountain rocks, the driver lost control over the bus and the vehicle met with accident. Ultimately, the Tribunal has held that the accident in question was result of rash and negligent driving by the driver of the ill-fated bus. On Issue No. 2, the learned Tribunal has observed that there is no proof of income of the deceased and therefore, notional income of the deceased was determined at Rs. 1,000/- per month. The Tribunal after deducting 1/3rd of it, has held that monthly loss of dependency comes to Rs. 750/-. Regarding age of the deceased, the Tribunal observed that the Medical officer has found the deceased about 35 years of age at the time of Post Mortem,

therefore, the age of the deceased can be taken as 35 years at the time of his death. Accordingly, the Tribunal has applied multiplier of 16 to work out the total loss of dependency and worked out the same as 750 x 12 x 16 =Rs. 1,44,000/-. In addition to this amount, sum of Rs. 2000/- has been awarded towards funeral expenses and ultimately, the claim petition has been decreed for the amount of compensation worth Rs. 1,46,000/- along with interest @ 9% per annum, as mentioned earlier.

We have heard learned counsel for the appellants as well as learned counsel for the U.P.S.R.T.C. and have carefully examined the material on record.

It has been submitted on behalf of the appellants that the learned Tribunal has not applied suitable multiplier of 17, while working out the amount of compensation, therefore, the impugned award deserves to be modified. On the other hand, the learned counsel for the respondent no.1 has drawn our attention to the fact that amount of Rs. 10,500/- has already been paid by the State and U.P.S.R.T.C. and this amount ought to have been adjusted towards payment of compensation.

Having considered the entire material on record, we find that to determine the just amount of compensation, the learned Tribunal, by taking the age of the deceased to be 35 years at the time of his death, ought to have applied multiplier of ***17*** instead of 16 in accordance with the Second Schedule of Section 163-A of the Act, therefore, the amount of compensation arrived at by the Tribunal deserves to be modified. In our view, it is a fit case in which multiplier of ***17*** can be safely applied to determine just amount of compensation. Accordingly, the amount of compensation comes to 750 x 12 x 17 = 1,53,000/- instead of Rs. 1,44,000/- as worked out by the Tribunal. The Tribunal has awarded Rs. 2000/- towards funeral expenses. Thus the total amount of compensation now comes to Rs. 1,55,000/-. However, as submitted by the learned

counsel for the U.P.S.R.T.C. the amount of Rs. 10,500/- already paid by the State and respondent no. 1 to the legal heirs of the deceased is subject to adjustment towards compensation amount. Since this amount relates to ex-gratia payment made by the Government and not by the respondent no.1, it cannot be adjusted as that of payment made under Section 140 of the Act. Accordingly, it is held that the claimants are entitled to get Rs.***1,55,00/-***as compensation instead of Rs. 1,46,000/- along with interest @ 9% per annum as has been awarded by the learned Tribunal. To this extent alone, the impugned order of the Tribunal stands modified.

The appeal is partly allowed. The impugned judgment and award is modified as mentioned above. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

26-08-2004
RCP